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**U.S. Citizenship  
and Immigration  
Services**

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**MAR 26 2004**

FILE:

Office: MANILA, PHILIPPINES

Date:

IN RE:

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge, Manila, Philippines, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the officer in charge will be withdrawn and the application will be declared moot.

The applicant is a native and citizen of the Philippines who was found by a consular officer to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is the mother of a naturalized citizen of the United States and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks the above waiver of inadmissibility in order to reside in the United States with her naturalized U.S. citizen husband and children.

The officer in charge (OIC) concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *See* Decision of the Officer in Charge, dated April 11, 2003.

On appeal, the applicant states that she does not believe that she has misrepresentation in her application and although she is still married to her husband, she does not think she is liable for his wrongdoings. *See* Form I-290B, dated May 8, 2003.

The record contains an affidavit of the applicant, dated May 15, 1998.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that the applicant and her husband were married on August 4, 1968. During May 1979, the applicant's husband entered the United States on a visitor visa and subsequently married a United States citizen in order to become a legal permanent resident of the United States. During this time, the applicant's husband remained married to the applicant. The applicant's husband then petitioned for the couple's two sons to gain legal permanent residence in the United States and one of the applicant's sons then petitioned for his mother, the applicant.

The record does not reflect an attempt to procure admission into the United States by fraud or willful misrepresentation on the part of the applicant. The AAO finds that the applicant cannot be held responsible for the actions of her husband and therefore, the applicant is not rendered inadmissible as a result of the willful misrepresentation or fraud committed by her husband.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. The applicant does not require a waiver of inadmissibility, so the appeal will be dismissed, the decision of the OIC will be withdrawn and the waiver application will be declared moot.

**ORDER:** The appeal is dismissed, the prior decision of the officer in charge is withdrawn and the application for waiver of inadmissibility is declared moot.